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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re FRANK V., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

FRANK V.,

Defendant and Appellant.

B183663

(Los Angeles County
Super. Ct. No. TJ14749)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Charles Q. Clay, III, Judge. Modified and, as so modified, affirmed.

Michele A. Douglass, under appointment by the Court of Appeal, for Minor
and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant
Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Ana R.
Duarte and Tasha G. Ideguchi, Deputy Attorneys General, for Plaintiff and
Respondent.

INTRODUCTION

Frank V. (hereinafter “Frank”) appeals from the judgment of wardship (Welf. & Inst. Code, § 602) entered following the juvenile court’s determination that he committed assault with a deadly weapon by means likely to produce great bodily injury, in violation of Penal Code section 245, subdivision (a)(1). Frank was placed home on probation, with a maximum confinement period of four years.

Frank’s sole contention on appeal is that a condition of probation is vague and overbroad, and must be modified to include a knowledge requirement. We agree, and modify the challenged condition accordingly. In all other respects, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Frank was charged in a Welfare and Institutions Code section 602 petition with one count of assault with a deadly weapon, arising from a January 8, 2005 incident in which he shot a 15-year-old girl in the lip with a BB gun.¹

The juvenile court sustained the petition. It declared the offense to be a felony, and placed Frank at home on probation, with a maximum period of confinement of four years. Without objection, as condition 21 of Frank’s probation, the juvenile court ordered that Frank “not use or possess narcotics, controlled substances, poisons, or related paraphernalia; stay away from places where users congregate.”

DISCUSSION

1. Modification of the challenged probation condition is appropriate.

Frank contends the portion of probation condition 21 requiring that he stay away from places where users congregate is unconstitutionally overbroad and vague, because it does not contain a knowledge requirement. We agree.

Generally, a defendant's failure to object at sentencing that a probation condition is unreasonable waives the claim on appeal. (*People v. Welch* (1993) 5 Cal.4th 228, 237.) However, it has also been held that constitutional claims presenting pure questions of law that can be resolved without reference to the particular sentencing record developed below may be raised on appeal. (*In re Justin S.* (2001) 93 Cal.App.4th 811, 815; cf. *People v. Welch, supra*, at p. 235.) The California Supreme Court is currently considering whether a challenge to a condition of juvenile probation is waived or forfeited by the failure to object. (*In re Sheena K.* (2004) 116 Cal.App.4th 436, review granted June 9, 2004, No. S123980.)

Frank's claim presents a pure question of law. Therefore, pending further guidance from our Supreme Court, we disagree that Frank has waived the claim by failing to object. (*In re Justin S., supra*, 93 Cal.App.4th at p. 815.)

Frank is correct that, absent a knowledge requirement, the challenged probation condition is unconstitutionally vague and overbroad. (*Id.* at p. 816; *People v. Lopez* (1998) 66 Cal.App.4th 615, 627-629; *People v. Garcia* (1993) 19 Cal.App.4th 97, 101-103.) In *In re Justin S.*, for example, Division Four of this court concluded that prohibiting association with gang members without restricting the prohibition to *known* gang members was overbroad and presented a classic case of vagueness. (*In re Justin S., supra*, 93 Cal.App.4th at p. 816 [citing *People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1117].) "Such a condition of probation 'suffers from constitutionally fatal overbreadth.' [Citation.]" (*In re Justin S., supra*, at p. 816; see also *People v. Lopez, supra*, at p. 628.) Similarly, in *People v. Garcia, supra*, 19 Cal.App.4th at page 102, the court concluded a probation condition was not narrowly drawn where it limited a defendant's association with persons not known to him to be users and sellers of narcotics.

¹ Because the facts underlying the offense are not relevant to the issue on appeal, we do not recite them here.

The same is true here. Because Frank could be deemed to be in violation of his probation by frequenting an area not known to him to be a place where narcotics users congregate, the probation condition is overbroad and vague.

The People argue that the knowledge requirement is implied in the probation condition and, if Frank is accused of violating probation condition 21, such a limiting construction will be imposed by the juvenile court. “However, the rule that probation conditions that implicate constitutional rights must be narrowly drawn, and the importance of constitutional rights, lead us to the conclusion that this factor should not be left to implication.” (*People v. Garcia, supra*, 19 Cal.App.4th at p. 102.) The proper remedy is to modify the condition, as appellant asks, to narrow its scope to encompass only places known to Frank as places where users congregate. (See *In re Justin S., supra*, 93 Cal.App.4th at p. 816; *People v. Lopez, supra*, 66 Cal.App.4th at p. 629.)

DISPOSITION

Probation condition 21 is modified to read: “Do not use or possess narcotics, controlled substances, poisons, or related paraphernalia; stay away from

places where you know users congregate.” In all other respects, the judgment is affirmed.

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ALDRICH, J.

We concur:

CROSKEY, Acting P. J.

KITCHING, J.